

**EXHIBIT C**



RECORDING REQUEST BY:  
DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
Sacramento Office  
8800 Cal Center Drive  
Sacramento, California 95826-3200

WHEN RECORDED, MAIL TO:  
DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
Sacramento Office  
8800 Cal Center Drive  
Sacramento, California 95826-3200  
Attention: James Tjosvold, Chief  
Northern California-Central  
Cleanup Operations Branch

(Space Above This Line For Recorder's Use Only)

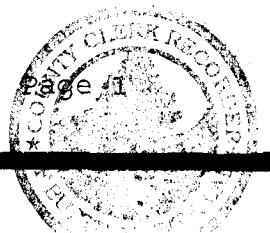
COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: 365 and 395 East 20th Street, Chico California

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This Covenant and Agreement ("Covenant") is made by and between Western Resources, Inc., as Receiver for the Victor Muscat Trusts "WRI") and Albert Campbell and Robert Tiberiis in their representative capacities as Executors of the Estate of Victor Muscat ("Estate Defendants") (collectively, the "Covenantors"), to the extent of their respective ownership interests, if any, in property situated in Chico, County of Butte, State of California, described as Assessor Parcel Numbers 000-240-002-000, 005-480-078-000 and 005-480-068-000 (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials as defined in California Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

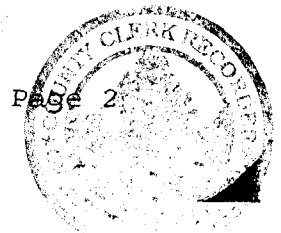


ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 4.11 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by East 20th Street on the northwest, Fair Street on the east and extends beyond Pavis Court on the southwest, County of Butte, State of California. This Property is more specifically described as Butte County Assessor's Parcel Numbers 000-240-002-000, 005-480-078-000 and 005-480-068-000.

1.02. Between 1906 and 1951, the Property was part of a railroad yard owned and operated by the Chico Electric Railway and later the Sacramento Northern Railroad Company. The yard was used to build and maintain rail cars, electric motors, and electric locomotives and to scrap rolling stock. Heavy metals may have been released to the soil by operation of the railroad yard. Between 1958 and 1985, an aluminum tube and can manufacturing business operated on the Property. That business used several volatile organic solvents, including trichloroethylene (TCE) and later tetrachloroethylene (PCE). Used solvent was reportedly disposed of on the Property.

1.03. The Property is a portion of a site being investigated and remediated for contamination by hazardous substances. The full extent of contamination and the final remedial actions that will be required for the Property and other areas of the site have not yet been determined. However, because hazardous materials, as defined in H&SC section 25260, including arsenic, PCE, TCE and their hazardous substance breakdown products, have been detected in the soil at the Property and in the groundwater in and under the Property, the Department concludes that a land use covenant is required for the Property.



ARTICLE II  
DEFINITIONS

2.01.     Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

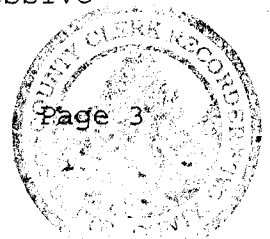
2.02.     Owner. "Owner" means anyone who at any time holds title to all or any portion of the Property.

2.03.     Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.01.     Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and California Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by, the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02.     Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive



owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

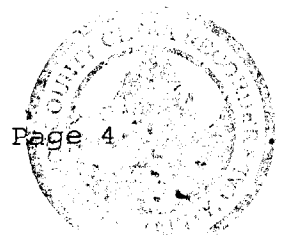
3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance, except as otherwise provided by law, by administrative order, by agreement, or by a specific provision of this Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.



4.02.      Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any excavated, contaminated soils shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.
- (d) The Owner or Occupant shall provide the Department written notice of any damage to any monitoring wells located on the Property. If such damage is caused by or legally attributable to the Owner or Occupant, the Owner or Occupant shall repair it immediately.
- (e) The Owner or Occupant shall provide the Department written notice regarding any observation of possible environmental contamination associated with past or present activities on the Property within fourteen (14) days of the event or observation.

4.03.      Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops, etc.);
- (b) Drilling for water, oil, or gas without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, investigation and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

4.05. Access for Implementing O&M. Any entity or person responsible for implementing Operation and Maintenance Activities shall have reasonable right of entry on and access to the Property for the purpose of implementing the Operation and Maintenance Activities until the Department determines that no further Operation and Maintenance is required.

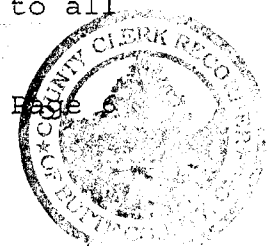
#### ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantors or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantors or Owner modify or remove any Improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

#### ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantors, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantors, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all



or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies and departments, or any other successor entities.

7.03. Recordation. DTSC shall record this Covenant, with all referenced Exhibits, in the County of Butte within a reasonable time after receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Property Owner  
365 East 20<sup>th</sup> Street  
Chico, California 95928





To Department: Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200  
Attention: James Tjosvold, Chief  
Northern California-Central  
Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantors"

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

"Department"

Date: \_\_\_\_\_

By: \_\_\_\_\_

James L. Tjosvold, Chief  
Northern California Central  
Cleanup Operations Branch



EXHIBIT A



PARCEL I:

Being a portion of Section 36, Township 22 North, Range 1 East, M.D.B. & M., said portion being particularly described as follows:

BEGINNING at an iron pipe on the Southeasterly line of 20th Street, formerly 8th Street, as shown on the Official Map of Mulberry Tract Subdivision #1, recorded in the office of the Recorder of the County of Butte, State of California, on March 14, 1907 in Map Book 6, at page 90, distant thereon North 35° 50' East 664.61 feet from the Northeasterly line of Park Avenue, said point being the most Northerly corner of that certain 6.89 acre tract of land conveyed by Sacramento Northern Railway to Victor Industries Corporation, by Deed dated March 4, 1955, recorded March 7, 1955 in Book 758, page 105 of Official Records of Butte County, State of California; from said point of beginning the intersection of the Southeasterly production of the centerline of Hamlock Street as shown on said Map and said Southeasterly line of 20th Street, bears North 35° 50' East along said Southeasterly line, a distance of 2.39 feet; as shown on the survey made by Polk & Batham, January, 1955; thence from said point of beginning, North 35° 50' East along said Southeasterly line of 20th Street, a distance of 241.12 feet, more or less, to an iron pipe marking the most Westerly corner of that certain 0.015 acre tract of land conveyed by Sacramento Northern Railway to California Prune & Apricot Growers Association by Deed dated October 29, 1947, recorded November 29, 1947 in Book 421 of Official Records of Butte County, at page 251; thence South 41° 51' East along the Westerly line of said tract so conveyed by last said Deed (the bearing of said Westerly line being given in said Deed as North 41° 47" West), a distance of 285.03 feet to an iron pipe set at the most Southerly corner of said tract conveyed by last said Deed; thence South 35° 50' West parallel with said Southeasterly line of 20th Street, a distance of 180.15 feet, more or less, to a point on the Northeasterly line of said 6.89 acre tract; thence North 54° 12' West along said Northeasterly line, a distance of 278.47 feet to the point of beginning.

AP No. 005-480-078

PARCEL II:

A parcel of land in the Northwest quarter of Section 36 in Township 22 North, Range 1 East, Mount Diablo Base and Meridian, described as follows:

BEGINNING at an iron pipe marking the intersection of the Southerly line of 20th (formerly 8th) Street and the Westerly line of Chico Avenue, according to the Official Map of Mulberry Tract, Subdivision Number 1,  
(Continued)



Valley Syndicate Addition to Chico, filed in the office of the County Recorder of the County of Butte, State of California, March 14, 1907 in Map Book 6, at page 90; running thence South 41° 47' East along said line of Chico Avenue 300.0 feet to an iron pipe; thence South 48° 13' West 66.6 feet; to an iron pipe 9.0 feet Easterly of the center of a spur track of Sacramento Northern Railway; thence North 41° 40' West 285.56 feet parallel with said track to an iron pipe on the Southerly line of 20th Street aforementioned; thence North 35° 54' East along last mentioned line 67.6 feet to the point of beginning.

EXCEPTING THEREFROM that parcel of land conveyed to the City of Chico by Deed recorded September 15, 1966, in Book 1443, of Official Records, at page 292.

Portion of AP No. 005-240-002

PARCEL III:

A parcel of land in the Northwest quarter of Section 36 in Township 22 North, Range 1 East, Mount Diablo Base and Meridian, described as follows:

COMMENCING at an iron pipe marking the intersection of the Southerly line of 20th (formerly 8th) Street and the Westerly line of Chico Avenue, according to the Official Map of Mulberry Tract, Subdivision Number 1, Valley Syndicate Addition to Chico, filed in the office of the County Recorder of the County of Butte, State of California, March 14, 1907, in Map Book 6, at page 90; running thence South 41° 47' East along said line of Chico Avenue 300 feet to an iron pipe; thence South 48° 13' West 66.6 feet to an iron pipe and the point of beginning of the parcel of land herein described; thence continuing South 48° 13' West 1.95 feet to a point; thence North 41° 47' West 285.03 feet to a point on the Southerly line of 20th Street aforementioned; thence North 35° 54' East along last mentioned line, 2.56 feet to an iron pipe; thence South 41° 40' East 285.56 feet to the point of beginning of the parcel of land herein described.

Portion of AP No. 005-240-002

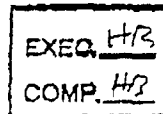


PARCEL VI:

A portion of Section 36, Township 22 North, Range 1 East, M.D.B. & M., County of Butte, State of California, said portion being more particularly described as follows:

Parcel 3, as shown on the Parcel Map recorded November 6, 1980, in Map Book 79, at page 69, in Recorder's Office, County of Butte, State of California.

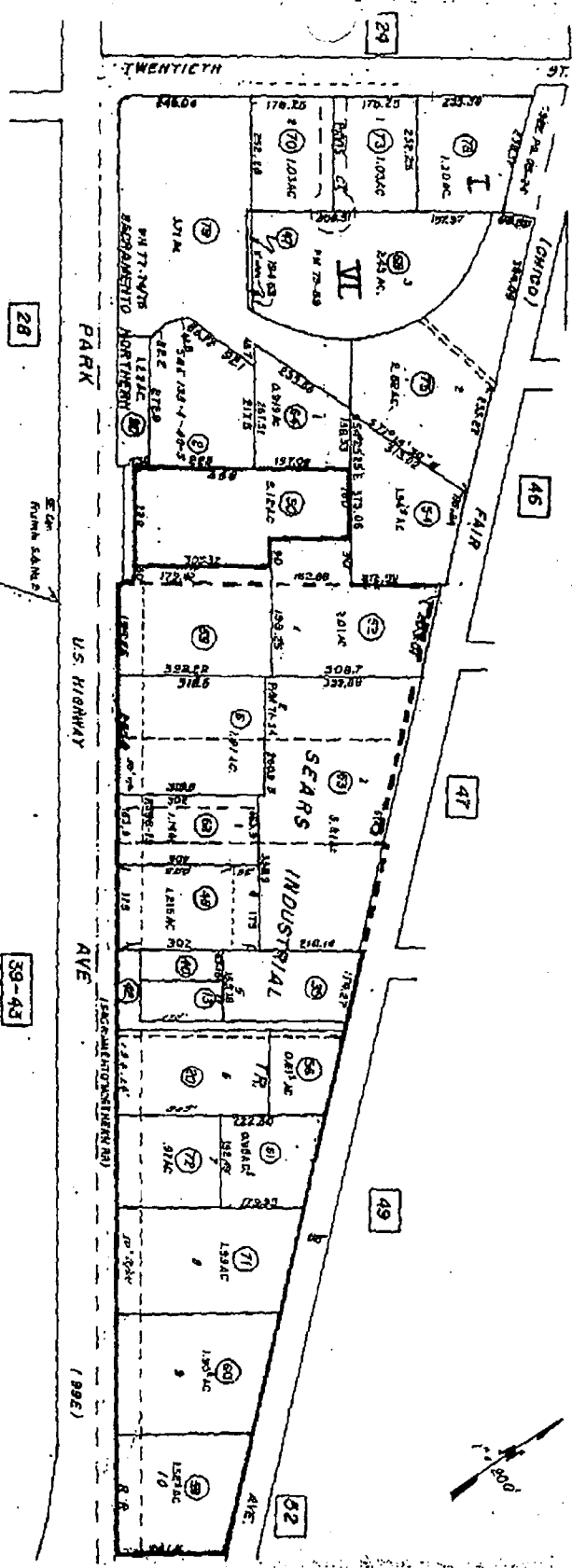
AP No. 005-480-068



44

SEARS INDUSTRIAL TRACT T.22N R.1E. M.22B.4M.

05-48



SEARS INDUSTRIAL TR. M.O.R. 84 B P. 45A

THIS IS NOT A SURVEY  
THIS IS A COPY OF THE COUNTY ASSESSOR'S  
PLAT MAP AND IS PROVIDED SOLELY TO AID IN  
LOCATING THE LAND IN RESPECT TO ROADS AND  
OTHER PARCELS. FIDELITY NATIONAL TITLE CO.  
ASSUMES NO LIABILITY FOR ANY LOSS  
OCCURRING BY REASON OF RELIANCE  
THEREON.

REVISED: 8-91

Assessor's Map No. 05-48  
County of Butte, Calif.

05-24



LIGHTFOOT TRACT 9 M.O.R. 13  
 ASHMORE TRACT 4 M.O.R. 22 & 25  
 BONNETT BLOCK 4 M.O.R. 21  
 PATTERSON TRACT 4 M.O.R. 18  
 ARCHER BLOCK 4 M.O.R. 5  
 HEWITT'S 2ND ADD. 1 M.O.R. 21  
 BILBERTY TRACT SUB. #1. 8 M.O.R. 9

Bufile County Assessors  
 Book 05, Page

NOTES: Items marked "or" for comparison  
 only and may not be transferable.

RECEIVED BY _____ RECORDED BY _____ INDEXED BY _____	DAY RECEIVED _____ DAY RECORDED _____ DAY INDEXED _____
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Prepared by The Bufile County Assessors

Butte County Assessor's Map  
Book 05, Page 24

ORIGIN BY	AD. CREDIT OF 1-15-50
RECEIVED BY	DR. RECEIVED ON 1-15-50
	UPPERMERE 2007-02 ROLL

Accepted by The State County Auditor's Office

**JUN 2 6 2003**

Description: Butte, CA Assessor Map 5.24 Page: 1 of 1  
Order: molly Comment:

United States District Court  
for the  
Eastern District of California  
June 14, 2004

crf

\* \* CERTIFICATE OF SERVICE \* \*

2:93-cv-00604

California

v.

Campbell

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on June 14, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

James C Collins  
Thelen Reid and Priest LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105-3601

MP/FCD

Kerry Eileen Shea  
Thelen Reid and Priest LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105-3601

Craig C Allison  
Stevens and O'Connell  
400 Capitol Mall  
Suite 1400  
Sacramento, CA 95814

William H Pohle Jr  
Union Pacific Railroad Company  
Law Department  
10031 Foothills Boulevard  
Suite 200  
Roseville, CA 95747-7101





Robert Charles Br...  
Union Pacific Railroad Company  
Law Department  
10031 Foothills Boulevard  
Suite 200  
Roseville, CA 95747-7101

Francis M Goldsberry II  
Goldsberry Freeman Guzman and Ditora LLP  
777 12th Street  
Suite 250  
Sacramento, CA 95814

K Robert Foster  
Law Office of K Robert Foster  
PO Box 4438  
2600 Pacific Avenue  
Stockton, CA 95204-0438

Janill L Richards  
Attorney General's Office  
PO Box 70550  
Oakland, CA 94612-0550

Kevin James  
Attorney General's Office  
PO Box 70550  
Oakland, CA 94612-0550

David E Martinek  
Dun and Martinek  
PO Box 1266  
Eureka, CA 95502

David H Dun  
Dun and Martinek  
PO Box 1266  
Eureka, CA 95502

Judy Holzer Hersher  
Downey Brand LLP  
555 Capitol Mall  
Tenth Floor  
Sacramento, CA 95814-4686

Michael T Shepherd  
Lea and Shepherd  
1367 East Lassen Avenue  
Suite 1  
Chico, CA 95973

Thomas H Clarke Jr  
Ropers Majeski Kohn and Bentley  
333 Market Street  
Suite 3150  
San Francisco, CA 94105

Scott Bradley Paul  
Ropers Majeski Kohn Bentley  
80 North First Street  
San Jose, CA 95113



Thrip C Hunsucker  
Resolution Law Group  
3717 Mount Diablo Boulevard  
Suite 200  
Lafayette, CA 94549-3589

Victor Muscat  
3830 Bonnyvale Road  
Brattleboro, VT 05301-8205

Timothy Jones  
Sagaser Franson and Jones  
PO Box 1632  
2445 Capitol Street  
Second Floor  
Fresno, CA 93717-1632

Maria Patrizio  
PRO HAC VICE  
Kavanagh Maloney and Osnato LLP  
415 Madison Avenue  
New York, NY 10017

Scott Scott McGowan Executor of the Estate of Clay McGowan  
202 Mission Serra Ter  
Chico, CA 95926-5114

Jack L. Wagner, Clerk

BY:

C. Foster  
Deputy Clerk

Date: JUN 13 2005

This is to certify that, if bearing the  
purple seal of this office, this is a true  
copy of the document filed with the  
Butte County Clerk-Recorder's Office.

Candace J. Grubbs

Butte County Clerk-Recorder

By: M. P. [Signature], Deputy

